CMPMO No. 133 of 2006

7.9.2006 **Present:** Mr.Ajay Sharma, Advocate, for the petitioner.

Mr.M.S.Chandel, Advocate General, with Mr.P.M.Negi, Dy. Advocate General, for the respondent.

By the impugned order the learned Court below has imposed a fine of Rs.500/- against the petitioner owing to the fact that the petitioner had not appeared as a witness on 6th December, 2005. The ground explained by the petitioner for non-appearance related to his having been engaged in election duty in the Panchayat elections. At page 29 of the file of the trial Court I have seen that the Additional District Magistrate, Kullu, sent a fax message to the Civil Judge (Sr. Division), Sarkaghat, in which he informed him that the petitioner was engaged in election duty and because of this he could not be spared for attending as a witness. The learned Judge was requested by the Addl. District Magistrate, to fix the case on some other date. This Fax message was received in the trial Court on 5th December, 2005 as is evident from the endorsement made thereupon.

In the light of the aforesaid facts and circumstances of the case, the learned Judge

ought not have taken the extreme course of punishing the petitioner and imposing the fine against him.

This petition is allowed. The impugned order is set aside with all the consequences.

Record be sent back to the trial Court immediately and forthwith.

CMP No.256/2006

In view of the disposal of the main petition, the present application is also disposed of.

7th September, 2006 (V.K.Gupta), C.J.
(C)